IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2266 OF 2005.

Shaikh Mohammed Murtuza. ... Appellant.

Versus.

The Secretary, Sunanda Coop.Housing Society. ... Respondent.

Shri R.R.Sharma for the Appellant.

CORAM : ABHAY S.OKA, J.

DATED : 17th April, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellant. A compilation of documents comprising of true copy of the plaint, written statement, affidavit of examination in chief, notes of cross-examination along with the true copies of the documents on record has been annexed to the Memorandum of Appeal. The Appellant is the original Plaintiff. The suit filed by the Appellant for injunction has been dismissed by the trial Court.

2. The learned Counsel for the Appellant submitted that the limited relief was claimed by the Appellant-Plaintiff in the suit for protection possession over the suit structure. The suit structure is a shop admeasuring about 5’ x 5’ situated within the premises of Sunanda Cooperative Housing Society. According to the case of the Appellant, he acquired the suit structure on the basis of affidavit dated 29th December

1989 executed by one Abdul Rehman Shaikh. The suit was contested by pointing out that the Appellant was not in possession of the suit structure and in fact the Appellant was hawking on the Municipal street. It is pointed out that the Appellant was not a member of the Society in question.

3. The learned Counsel appearing for the Appellant submitted that as evidence on record shows that the possession of the Appellant over the suit structure is established, a limited relief could always be granted for protection of possession.

4. I have considered the submissions and have gone through the copies of the pleadings and notes of evidence. At the outset it must be noted that there are only four prayers in the plaint. The third prayer is for costs and the fourth prayer is the usual prayer for grant of other and further reliefs. Prayers (a) and (b) read thus:

> (a) Pending the hearing and final disposal of the suit, the defendant, his servants, agents, and/or any other person/persons claiming through him be restrained by an order and injunction of this Hon’ble Court from dispossessing, disturbing, the

peaceful possession of the Plaintiff and/or demolishing removing the suit premises are admeasuring about lying and situated at Sunanda Building, Juhu Road, Santacruz (West), Mumbai 400 054, except than by due process of law.

(b) That the Hon'ble Court be pleased to appoint the Court Commissioner to visit the suit premises and submit report in respect thereof.

Thus it is obvious that there is no substantive relief either of declaration or perpetual injunction claimed in the prayers made in the suit and the prayer is only for temporary injunction till disposal of the suit. In fact the suit deserves to be dismissed only on this ground. Nevertheless I have considered the submissions made by the Advocate appearing for the Appellant.

5. It must be noted here that the Appellant is not claiming any specific title to the suit structure. According to him, his entry into the suit structure is on the basis of the affidavit of one Abdul Rehman. Surprisingly the Appellant has not examined the said Abdul Rehman as a witness. In the cross-examination, the Appellant-Plaintiff admitted that he did not pay any

consideration to the said Abdul Rehman. The Appellant could not disclose whether the said Abdul Rehman was a member of the Respondent No.1-society.

6. The trial Court held that there was no evidence on record to show as to how the Appellant entered into possession of the suit structure, as there was no evidence to show that the said Abdul Rehman was in possession of the suit structure at any time earlier. The trial Court referred to the evidence led by the Respondent. In the evidence it is brought on record that the compound wall which was earlier constructed by the Society was demolished as per the direction of the Municipal Corporation. At that stage, the present Appellant tried to encroach upon the property of the society.

7. Apart from the fact that the prayer in the suit is defective, this was a case where absolutely no evidence was produced by the Appellant to show that the alleged predecessor-in-title of the Appellant i.e. the said Abdul Rehman was in possession of the suit structure and the said Abdul Rehman has put the Appellant in possession of the suit structure.

6. There is no error in the view taken by the learned trial Judge. There is no merit in the First

Appeal and the same is dismissed with no order as to costs.

Judge.